

CITY OF AUBURN
PROJECT TITLE
CONSTRUCTION AGREEMENT

This **Project Title**, Agreement (“Agreement”), is entered as of this _____ (“Effective Date”), by and between the City of Auburn, with offices located at 1225 Lincoln Way, Auburn, CA 95603 (“City”) and **CONTRACTOR NAME**, with offices located at **CONTRACTOR ADDRESS** (“Contractor”). In consideration of the mutual promises and agreements made herein and intending to be legally bound, the parties agree as follows:

1. **CONTRACT PRICE**

- A. The contract price is \$_____.
- B. The contract price is based on the unit prices in the bid documents and, together with salvage materials (if any), constitutes the entire consideration for performance and completion of the work described herein and in the contract drawings and specifications which are incorporated herein by this reference.
- C. City shall pay Contractor the contract price and Contractor shall furnish all supervision, technical personnel, labor, materials, equipment, tools, permits, and services needed to perform and complete the work to be performed under this Agreement.
- D. Contractor will honor the contract price until [date].

2. **TIME OF COMMENCEMENT AND COMPLETION**

The City is hereby giving the Contractor a written Notice to Proceed with the work to be performed under this Agreement. The Contractor shall fully complete the work directed within the time set forth as estimated for such work under this Agreement. The estimated time of completion is **TIME** from when work commences,

3. **COMPLIANCE WITH PROVISIONS OF BID DOCUMENTS**

Contractor shall comply with all terms, provisions, conditions and requirements of the bid provided as Exhibit A, which are as follows:

Part A	Proposal
Part B	Special Provisions

4. **AGREEMENT ATTACHMENTS**

All items described in Paragraph above of this Agreement are attached hereto, incorporated herein, and made a part hereof as though set forth in full herein. The complete agreement shall consist of this document and attachments, and no other documents or oral amendments shall be considered part of this agreement unless expressly and specifically incorporated herein.

5. COMPLIANCE WITH PROVISIONS OF AGREEMENT AND ATTACHMENTS

Contractor shall comply with all provisions of this Agreement and the Agreement attachments.

6. INSURANCE PROVISIONS

During the term of this Agreement, Contractor shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Contractor's performance of this Agreement.

A. Such insurance shall be of the types and in the amounts as set forth below:

- i. Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) including products and operations hazard, contractual insurance, broad form property damage, independent Contractors, personal injury, underground hazard, and explosion and collapse hazard where applicable.
- ii. Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per incident.
- iii. Worker's Compensation insurance as required by the laws of the State of California.
- iv. Employers Liability Insurance for bodily injury or disease with minimum limits of One Million Dollars (\$1,000,000) per accident.

B. Contractor shall require each of its subcontractors to maintain insurance coverage that meets all of the requirements of this Agreement.

C. The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.

D. Contractor agrees that if it does not keep the aforesaid insurance in full force and effect, City may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay the premium thereon at Contractor's expense.

E. At all times during the term of this Agreement, Contractor shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that the aforesaid policies are in effect in the required amounts and naming the City and its officers, employees, agents and volunteers as

additional insureds. Contractor shall, prior to commencement of work under this Agreement, file with City's Risk Manager such certificate(s).

- F. Contractor shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.
 - G. The general liability and automobile policies of insurance required by this Agreement shall contain an endorsement naming City and its officers, employees, agents and volunteers as additional insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Contractor agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
 - H. The insurance provided by Contractor shall be primary to any coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Contractor's insurance and shall not contribute with it.
 - I. All insurance coverage provided pursuant to this Agreement shall not prohibit Contractor, and Contractor's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Contractor hereby waives all rights of subrogation against the City.
 - J. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, Contractor shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Contractor shall procure a bond in the amount of the deductible or self-insured retention to guarantee payment of losses and expenses.
 - K. Procurement of insurance by Contractor shall not be construed as a limitation of Contractor's liability or as full performance of Contractor's duties to indemnify, hold harmless and defend under this Agreement.
7. This Agreement is subject to 8-hour work day and wage and hour penalty law, including, but not limited to, California Labor Code Sections 1810 and 1813 as follows:

The Contractor shall strictly adhere to the provisions of the Labor Code regarding the 8-hour day and the 40-hour week, overtime, Saturday, Sunday and holiday work and nondiscrimination because of race, religious creed, color, national origin, ancestry, physical

disability, mental disability, medical condition, marital status, sex or sexual orientation, except as provided in Section 12940 of the Government Code. Pursuant to the provisions of the Labor Code, eight hours' labor shall constitute a legal day's work. Work performed by the Contractor's employees in excess of eight hours per day, and 40 hours during any one week, must include compensation for all hours worked in excess of eight hours per day, or 40 hours during any one week, at not less than one and one-half times the basic rate of pay. The Contractor shall forfeit as a penalty to City \$25.00 or any greater penalty set forth in the Labor Code for each worker employed in the execution of the work by the Contractor or by any Subcontractor of the Contractor, for each Calendar Day during which such worker is required or permitted to the work more than eight hours in one Calendar Day or more than 40 hours in any one calendar week in violation of the provisions of said Labor Code.

8. This Agreement shall comply with all California and federal statutes relating to nondiscrimination. These include but are not limited to:
 - A. Title VI of the Civil Rights Act of 1964 (P.L. 88-352), as amended, which prohibits discrimination on the basis of race, color or national origin;
 - B. Title IX of the Education Amendments of 1972, as amended (29 U.S.C. §§ 1681-1683 and 1685-1686), which prohibits discrimination on the basis of sex;
 - C. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794) which prohibits discrimination on the basis of handicaps;
 - D. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107) which prohibits discrimination on the basis of age;
 - E. The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255) as amended, relating to nondiscrimination on the basis of drug abuse;
 - F. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
 - G. Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. § 290dd-2), as amended, relating to confidentiality of alcohol and drug abuse patient records;
 - H. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing;
 - I. Title 28, Code of Federal Regulations, Part 42, Subparts C, D, E, and G;
 - J. Title 28, Code of Federal Regulations, Part 35;
 - K. Any other nondiscrimination provisions in the specific statute(s) under which application for federal assistance is being made; and
 - L. The requirements on any other nondiscrimination statute(s) which may apply to the application.

9. This Agreement is further subject to Workers' Compensation obligations, including, but not limited to, California Labor Code §§ 1860 and 1861 as follows:

Contractor shall take out and maintain, during the life of this Agreement, Worker's Compensation Insurance for all of Contractor's employees employed at the site of improvement; and, if any work is sublet, Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Contractor. Contractor and any of Contractor's subcontractors shall be required to provide City with a written statement acknowledging its obligation to secure payment of Worker's Compensation Insurance as required by Labor Code § 1861.

10. This Agreement is subject to the provisions of California Public Contracts Code § 6109, and Contractor hereby offers and agrees to make any assignment necessary in the event that Contractor is ineligible to perform the work described herein. Further, the successful bidder shall be prohibited from performing work on this project with a subcontractor who is ineligible to perform work on the project pursuant to §§ 1777.1 or 1777.7 of the Labor Code.

11. This Agreement is further subject to the provisions of California Public Contract Code § 7103.5 as follows:

In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.

12. This contract is further subject to the provisions of Article 1.5 (commencing at Section 20104) of Division 2, Part 3 of the California Public Contract Code regarding the resolution of public works claims of less than \$375,000. Article 1.5 mandates certain procedures for the filing of claims and supporting documentation by the contractor, for the response to such claims by the contracting public City, for a mandatory meet and confer conference upon the request of the contractor, for mandatory nonbinding mediation in the event litigation is commenced, and for mandatory judicial arbitration upon the failure to resolve the dispute through mediation. This contract hereby incorporates the provisions of Article 1.5 as though fully set forth herein.

13. This contract is further subject to the provisions of Article 1.7 (commencing at Section 20104.50) of Division 2, Part 3 of the California Public Contract Code regarding prompt payment of contractors by local governments. Article 1.7 mandates certain procedures for the payment of undisputed and properly submitted payment requests within 30 days after receipt, for the review of payment requests, for notice to the contractor of improper payment requests, and provides for the payment of interest on progress payment requests which are not timely made in accordance with this Article. This contract hereby incorporates the provisions of Article 1.7 as though fully set forth herein.
14. At any time during the term of the Contract the Contractor may, at its own expense, substitute securities for funds otherwise withheld as retention (or the retained percentage) in accordance with Public Contract Code § 22300.
15. Pursuant to Labor Code Section 1776, each contractor and subcontractor shall keep accurate payroll records showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that is made under penalty of perjury, stating both of the following:
 - A. The information contained in the payroll record is true and correct.
 - B. The employer has complied with the requirements of the Labor Code Sections 1771, 1811 and 1815 for any work performed by his or her employees on the public works project.

The payroll records enumerated under supervision (a) shall be verified and shall be available for inspection at all reasonable hours as required by the Labor Code Section 1771.

16. This contract is subject to the prevailing wage law, including, but not limited to California Labor Code Sections 1773.2 and 1771 as follows:

The contractor shall pay the prevailing wage rates for all work performed under this contract. When any craft or classification is omitted from the general prevailing wage determinations, the Contractor shall pay the wage rate of the craft or classification most closely related to the omitted classification. The Contractor shall forfeit as a penalty to the City \$200.00 or any greater penalty provided in the Labor Code for each calendar day or portion thereof, for each worked paid less than the prevailing wage rates for any work done under the Contract employed in the execution of the work by the Contractor or by any Subcontract under the Contractor in violation of the provisions of the Labor Code. In addition, the difference between

such prevailing wages rates and the amount paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Contractor.

17. Pursuant to Labor Code § 1725.5, CONTRACTOR and any subcontractor must be registered with the California Department of Industrial Relations for any bid proposal submitted on or after March 1, 2015, and for any contract for public work entered into on or after April 1, 2015. Further, this project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
18. To the fullest extent permitted by law, contractor shall, at its sole cost and expense, fully defend, indemnify and hold harmless City, its authorized representatives and their respective subsidiaries, affiliates, members, directors, officers, employees and agents (collectively, the “indemnitees”) from and against any and all claims, actions, demands, costs, judgments, liens, penalties, liabilities, damages, losses, and expenses, including but not limited to any fees of accountants, attorneys or other professionals (collectively “liabilities”), arising out of, in connection with, resulting from or related to, any alleged act, omission, fault or negligence of contractor, contractor’s representative, or any of its officers, agents, employees, subcontractors or suppliers, or any person or organization directly or indirectly employed by any of them (collectively, the “indemnitors”), in connection with or relating to or claimed to be in connection with or relating to the work performed under this agreement. Contractor shall not be entitled to any refund of attorneys’ fees, defense costs or expenses in the event that it is adjudicated to have been non-negligent.

Contractor shall not be required to defend or indemnify City for liabilities caused by the sole active negligence or willful misconduct of the City.

If contractor is a joint venture or partnership, each venturer or partner shall be jointly and severally liable for any and all of the duties and obligations of contractor that are assumed under or arise out of this agreement. Each of such venturers or partners waives notice of the breach or non-performance of any undertaking or obligation of contractor contained in, resulting from or assumed under this agreement, and the failure to give any such notice shall not affect or impair such venturer’s or partner’s joint and several liability hereunder.

19. Notwithstanding any other provision of this agreement to the contrary, the provisions of this section shall apply.

The Contractor shall complete all or any designated portion of the Work called for under the Contract within the time set forth in Contractor’s proposal dated **DATE**.

In accordance with Government Code 53069.85, and all other applicable law, the Contractor agrees to forfeit and pay the City the amount of Two Hundred Dollars (\$200.00) per day for each and every day of unauthorized delay beyond the

completion date, which shall be deducted from any monies due the Contractor. This payment shall be considered liquidated damages. Contractor agrees that such liquidated damages are reasonable under the circumstances existing at the time of execution of the contract, that such liquidated damages are to compensate City for losses that are difficult to measure and that such damages are not a penalty.

Failure of the Contractor to perform any covenant or condition contained in the Contract Documents within the time period specified shall constitute a material breach of this Contract entitling the City to terminate the Contract unless the Contractor applies for, and receives, a written extension of time.

Failure of the City to insist upon the performance of any covenant or conditions within the time period specified in the Contract Documents shall not constitute a waiver of the Contractor's duty to complete performance within the designated periods unless the City has executed a waiver in writing.

The City's agreement to waive a specific time provision or to extend the time for performance shall not constitute a waiver of any other time provision contained in the Contract Documents.

Failure of the Contractor to complete performance promptly within the additional time authorized in a waiver or extension of time agreement shall constitute a material breach of this Contract entitling the City to terminate this agreement.

The Contractor shall not be deemed in breach of this Contract and no forfeiture due to delay shall be made because of any delays in the completion of the work due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor provided the Contractor requests from the Public Works Director an extension of time in writing. Unforeseeable causes of delay beyond the control of the Contractor shall include acts of God, acts of a public enemy, acts of the government, acts of the City, or acts of another contractor in the performance of a contract with the City, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and weather, or delays of subcontractors due to such causes, or delays caused by failure of the owner of a utility to provide for removal or relocation of existing utility facilities. Delays caused by actions or neglect of Contractor or his/her agents, servants, employees, officers, subcontractors, directors, or of any party contracting to perform part of all of the Work or to supply any equipment or materials shall not be excusable delays. Excusable delays (those beyond the Contractor's control) shall not entitle the Contractor to any additional compensation. The sole recourse of the Contractor shall be to seek an extension of time.

20. Should the city request a change order, such change orders may only be authorized in writing by the City's Public Works Director.

21. DEFECTIVE WORK

All work which is defective in its construction or deficient in any of the requirements set by City Standards Specifications shall be remedied or replaced by the Contractor in an acceptable manner at their own expense.

22. COMMUNICATIONS

All written communications between the Contractor and the City must carry the proper contract number. Such communications shall be effective upon receipt at the following address:

CITY

CONTRACTOR

INSERT ADDRESSES HERE

23. CHANGES IN WORK TO BE PERFORMED

The City reserves the right to withdraw or delete any portion of the work to be performed, pursuant to the change order procedure, or the provisions of the General Conditions, Special Provisions and Technical Specifications, for any reason deemed to be in the best interests of the City of Auburn.

23. INSPECTION AND AUDIT OF RECORDS

Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to Contractor under this Agreement. All such documents shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of City. In addition, pursuant to Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars, all such documents and this Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of City, for a period of three (3) years after final payment under the Agreement.

City

CONTRACTOR

By: _____
City of Auburn,
Title:

By: _____
Its:

Date:

By: _____

Its:

Date:

Approved as to Form:

EXHIBIT B
SPECIAL PROVISIONS

NON-COLLUSION AFFIDAVIT

The undersigned declares:

I am the _____ of _____, the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____[date], at _____[city], _____[state].”

Signature

WORKER'S COMPENSATION INSURANCE ACKNOWLEDGEMENT

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.' If any class of employees engaged in work under this contract at the site of the Project is not protected under any Worker's Compensation law, Contractor shall provide and shall cause each subcontractor to provide adequate insurance for the protection of employees not otherwise protected. Contractor shall indemnify and hold harmless City for any damage resulting from failure of either Contractor or any subcontractor to take out or maintain such insurance.

[Name and Title]

[Date]